

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

MAYWOOD CAPITAL CORP., et al,

Chapter 11  
Case No. 05-10987 (RDD)

Debtors

-against-

JOHN S PEREIRA, as chapter 11 Trustee of  
121 West 122<sup>nd</sup> Street Corp.

(Jointly Administered)  
Case Nos. 04-17047, 05-10944 to  
05-10987, 05-11521 and 05-11523

Plaintiff

v.

HARRIET E. BEST

Defendant

Adversary Proceeding No.:  
05-02577 (RDD)

Pursuant to Bankruptcy Rule 8006, appellant, Harriett E. Best, hereby designates the following items to be included in the record on the appeal and sets forth as follows a statement of the issues to be presented on appeal of the above-referenced case from the order of the United States Bankruptcy Court for the Southern District of New York, Honorable Robert D. Drain, dated January 28, 2008:

**Designation of Contents of Record**

1. Deed dated as of January 6, 2005.
2. Chapter 11 Bankruptcy Petition of 121 West 122<sup>nd</sup> Street Corp.
3. March 24, 2005 Order appointing Chapter 11 Trustee.
4. Trial Exhibit # 6 - June 2, 2005 Order authorizing retention of Norwax Associates, Inc. as managing agent.
5. Trial Exhibit # 5 – May 5, 2005 Order authorizing retention of G.E.M. Auction

- Corporation as real estate broker and custodian.
6. Complaint dated September 19, 2005.
  7. Defendant's December 13, 2005 Answer to Complaint.
  8. Amended Complaint dated December 27, 2005.
  9. Defendant's January 30, 2006 Answer to Amended Complaint.
  10. Trustee's Motion for Summary Judgment.
  11. Affidavit of Harriett Best in opposition to trustee's motion.
  12. Affidavit of Attorney Christopher Sowers in opposition to trustee Motion for Summary Judgment.
  13. Affirmation in opposition to trustee's Motion for Summary Judgment.
  14. Memorandum of Law in opposition to Motion for Summary Judgment.
  15. Transcript of Hearing on Summary Judgment Motion.
  16. Decision and Order denying Summary Judgment Motion.
  17. Deposition of Harriett Best.
  18. Deposition of Patricia Best.
  19. Motion to Disallow Trustee's Claim.
  20. Trustee's opposition to Motion to Disallow Claim & Motion to Amend Complaint.
  21. Reply Affirmation in support of Defendant's Motion to Disallow Trustee's Claim & in opposition to Trustee's Motion to Amend Complaint.
  22. Transcript of Hearing on Motion to Disallow Trustee's Claim.
  23. Trustee's Second Amended Complaint.
  24. Answer to Second Amended Complaint.
  25. Deposition Testimony of Tim Mangin.
  26. Deposition Testimony of Parnell Pierre Louis.

27. Deposition Testimony of Leon Thomas.
28. Deposition Testimony of John S. Pereira.
29. Trial Exhibit # 4 – Real Property Transfer Tax form reflecting payment of Real Property Tax on April 11, 2005.
30. Trial Exhibit # 9 - Undated Notice on Maywood letterhead re new ownership of property
31. Trial Exhibit # 10 - Undated Notice re: new ownership of property.
32. Trial Exhibit # 11 – Notice of Pendency, dated December 16, 2003.
33. Trial Exhibit # 12 – Notice of Pendency, dated August 25, 2004, Index No.: 04112515.
34. Trial Exhibit # 13 – Notice of Pendency, dated August 25, 2004, Index No.: 04112516.
35. Trial Exhibit # 14 – Assignment of Leases and Rents.
36. Trial Transcript of December 3, 2008.
37. Order and Judgment dated January 28, 2008.

**Statement of Issues to be Presented on Appeal**

1. The Bankruptcy Court erred in determining that the trustee was a bona fide hypothetical purchaser without value within the meaning of 11 U.S.C. §544(a)(3) with respect to the real property purchased by the defendant on January 6, 2005 from the debtor prior to the debtor filing bankruptcy on February 19, 2007, and therefore should not be permitted to avoid the transfer to the defendant.

2. Under New York law, there was constructive notice to the trustee to defeat his bona fide purchaser status.

3. The trustee did not meet its burden of establishing that he was a bona fide purchaser.

Dated: Brooklyn, New York  
February 19, 2008

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